

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEELCASE, INC. a Michigan
corporation,

Plaintiff,

v.

Case No.: 1:04cv0026
Hon. Robert Holmes Bell
Chief, U. S. District Judge

HARBIN'S INC., an Alabama
corporation, MICHAEL G. HARBIN
and HOPE D. HARBIN PATTERSON (now
HOPE DUNCAN PATTERSON),

Defendants.

MILLER, JOHNSON, SNELL &
CUMMISKEY, P. L. C.
Jon G. March (P17065)
Attorneys for Plaintiff
250 Monroe Avenue, N. W. - Ste 800
P. O. Box 306
Grand Rapids, MI 49501-0306
(616) 831-1700

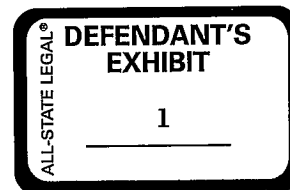
SILVERMAN, SMITH, BINGEN & RICE, P.C.
Robert W. Smith (P31192)
Attorneys for Defendant Michael G. Harbin
151 S. Rose Street
707 Comerica Building
Kalamazoo, MI 49007
(269) 381-2090

HOPE D. HARBIN - PATTERSON (now
HOPE DUNCAN PATTERSON)
Defendant in Pro Per
4514 Chamblee Dunwoody Rd., 238
Atlanta, GA 30338-6202

**AFFIDAVIT OF ROBERT W. SMITH
IN OPPOSITION TO STEELCASE, INC.'S MOTION FOR LEAVE
TO FILE A SECOND AMENDED COMPLAINT**

Robert W. Smith deposes and says as follows:

1. I am the attorney for Defendant Michael G. Harbin ("Harbin").
2. If called upon to testify I can testify truthfully and accurately as to all those matters contained herein.



3. I received a Notice of Taking Deposition *Duces Tecum* of Michael G. Harbin on December 30, 2004. This Notice purported to require that Harbin produce documents, not at Harbin's deposition, but well in advance.
4. On January 4, 2005, I sent a letter to Attorney Jon G. March (**Exhibit 3**) objecting to the misuse of the subpoena power and informing him that many of the documents were unavailable. Moreover, I objected to the broad scope of the documents requested.
5. I agreed with opposing counsel on January 17, 2005, that Harbin would produce those documents which he could obtain possession of prior to a scheduled telephone deposition on January 19, 2005. We agreed that Harbin would produce documents only pertaining to the relevant period starting July, 2002. Unfortunately, Harbin was unable to obtain the documents promised in a timely fashion and opposing counsel then refused to do the deposition by telephone.
6. The requested documents which Harbin could get possession of were produced a few days prior to Harbin's deposition on January 27, 2005. The deposition went forward on the morning of January 27, 2005.
7. Further your affiant sayeth not.

Dated: March 15, 2005

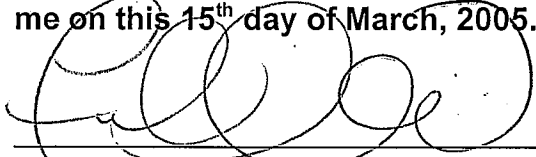
SILVERMAN, SMITH, BINGEN & RICE, P.C.
Attorneys for Defendant Michael G. Harbin



Robert W. Smith (P31192)

STATE OF MICHIGAN)
 >
COUNTY OF KALAMAZOO).

**SUBSCRIBED and SWORN to before
me on this 15th day of March, 2005.**

A handwritten signature in black ink, appearing to read 'Felicia A. Williams', written over a horizontal line.

**Felicia A. Williams, Notary Public
Kalamazoo County, State of Michigan
My Commission Expires: 06/16/05
Acting in the County of Kalamazoo.**